

HERBERT WOLFF

MAY 20, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5776]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5776) for the relief of Herbert Wolff, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay Herbert Wolff (1) the sum of \$347.83 for annual leave which he had accrued as an employee of the Department of Commerce during 1954, and (2) the sum of \$897.50 for reimbursement for subsistence for the period from May 27, 1954, to September 4, 1954, both dates inclusive, during which period he was a resident of Coral Gables, Fla., although he was employed in Washington, D. C.

STATEMENT OF FACTS

The Department of Commerce, in its report dated May 28, 1957, gives in detail the history of this proposed legislation and is opposed to the bill and states its reasons for not approving the legislation.

Mr. Wolff states in his letter the following:

The circumstances surrounding my claim entail two aspects, annual leave and per diem payment, respectively, and involve the Department of Commerce. Regarding the former phase, I had accumulated 65 hours of current annual leave during the 1954 calendar year which I knew I would have to take or lose in accordance with existing regulations. I informed the Administrative Assistant of this condition, but she advised me that I would and could be paid for it in a lump-sum payment along with my legally accumulated leave at time of termination. In any event, I requested leave and

the request was denied, but the 65 hours in question were included in my lump-sum payment on termination on September 4, 1954. A letter from the Department of Commerce dated April 6, 1956, informed me that the General Accounting Office had taken exception to the payment for the 65 hours and were demanding return of \$347.83, which was subsequently repaid to the United States Treasury by me. My 1954 Federal income-tax return listed this amount as included in my taxable income and the tax was accordingly paid. The Department of Commerce then issued me a W-2 form indicating that I was entitled to deduct this amount from my 1956 income but in order to do this I would have to itemize all my deductions and it is to my advantage to take the standard deduction allowed rather than follow this procedure. I have been advised by the Internal Revenue that an amended return for 1954 is not allowable in this case; therefore, I am not only out the principal but the tax I have already paid on it also.

The latter phase relates to a request for per diem payment while kept on extended separation duty between May 27, 1954, and September 4, 1954. The amount involved in this phase is \$897.50 which is accounted for by the elapse of 390 periods at \$2.25 per period which was the prevailing per diem rate at that time. I made claim for such payment to the Department of Commerce on May 16, 1956, but the claim was disallowed. I then presented a claim to the Claim Division of the General Accounting Office. This claim (Z-1363639) was also disallowed on November 29, 1956.

He further states:

At the time of my departure for Israel (April 26, 1952), I closed out my home at 7327 Forest Road, Kent Village, Md., and agreeable to recommendations from the Department shipped some household goods to Tel Aviv, Israel. The greater balance of my household effects were placed in the Merchants Storage Warehouse. When I landed in Israel that was the only home I had.

After my arrival in Tel Aviv, Israel, the mission acquired an apartment building to house its members and I was given furnished quarters therein. The few pieces of furniture I had shipped over then became unnecessary and were disposed of. I retained only linens, china, and kitchenware.

At the time of my departure from Tel Aviv, Israel, on May 4, 1954, everything except my personal belongings were disposed of. All my personal belongings except one suitcase was shipped to Washington by the mission. No household effects were shipped.

In mid-November of 1953 my wife returned to the United States and immediately repaired to Miami, Fla., to locate a home for us. She committed us to a house at 2010 North Greenway Drive in Coral Gables, Fla., and had our household goods removed from the Merchants Storage Warehouse in Washington to 2010 North Greenway Drive, Coral Gables, Fla. All this happened prior to my return to the United States.

On my return I gave the Florida address to Miss Jean White, administrative assistant in our office in Washington, but she suggested giving a local address where I could be reached for the convenience of the office so I gave her my son's address at 5025 Mangum Road, College Park, Md., where I had had my personal effects shipped.

All personnel actions granting extensions of my employment listed me as being on the Israel payroll and I was never transferred off of it.

The continuation of my services was entirely for the convenience of the Government and at termination on September 4, 1954, I immediately departed for my residence in Florida where I remained until June 1955.

The collective facts then are that no household goods were shipped from Israel to Maryland only personal effects, that I had no residence other than 2010 North Greenway Drive, Coral Gables, Fla. where my household goods from the Merchants Storage Warehouse in Washington, D. C., were shipped prior to my return. That the College Park address was given for the convenience of the office. That the extension of my employment was for the convenience of the Government. That I was never removed from the Israel payroll and transferred to Washington. That my continued employment was accomplished by extended personnel action.

Items referred to in report from Commerce are retained in committee files.

After a careful review of the evidence submitted to the committee and much discussion it is of the opinion that Mr. Wolff is entitled to the sum as set forth in the bill and, therefore, recommend favorable consideration of the bill.

THE SECRETARY OF COMMERCE,
Washington, May 8, 1957.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of March 12, 1957, for the views of this Department with respect to H. R. 5776, a bill for the relief of Herbert Wolff.

There follows a summarization of our file relative to Mr. Wolff's claim for annual leave and subsistence payments. The summarization has been numbered to correspond with the clauses in H. R. 5776.

(1) Leave payment in the amount of \$347.83:

Mr. Herbert Wolff entered on duty with the Department of Commerce March 31, 1952, with headquarters Tel Aviv, Israel, as industrial specialist (highway transport specialist) point 4, grade 3, step No. 4, \$10,030 per annum (GS-1150-14). He was separated from the rolls per reduction in force at close of business September 5, 1954. Overpayment of leave for 65 hours in the amount of \$347.83 resulted from a misinterpretation of the Annual and Sick Leave Act of 1951 and Public Law 102, 83d Congress, approved July 2, 1953, which amended certain sections of the Annual and Sick Leave Act of 1951.

Point IV employees were allowed to accrue up to 45 days annual leave, per section 3 (b) of Public Law 102, since they were not considered as "employees in the Foreign Service of the United States under the Department of State." In January 1955, it was discovered that the Department had been in error in allowing accruals of more than 30 days for point 4 employees, since they were subject to the same regulations as employees in the Foreign Service. This fact was referred to the International Cooperation Administration, which agency was the sponsor of the point 4 program, and this Department was informed that we should have been, but were not, notified previously of the fact that point 4 employees were to be considered as Foreign Service employees for leave purposes. At that time, adjustments were made on the leave records of each point 4 employee who had erroneously been credited with leave beyond the 30-day limitation or his ceiling established December 20, 1952, the close of the 1952 leave year. Unfortunately, due to Mr. Wolff's separation September 5, 1954, he was the only employee (point 4) separated and paid lump sum in excess of 30 days.

Following is employee's leave record (A) as posted and on which lump-sum payment was based; and (B) as should have been credited in accordance with Public Law 102: (SCD June 5, 1941—category 6).

	A ¹		B ²	
	Annual	Sick	Annual	Sick
Balance transferred from Office of Secretary of Defense, c.o.b. Mar. 30, 1952.....	177	258	177	258
Accrual, Mar. 31-Dec. 20, 1952.....	118	76	118	76
Used, Mar. 31-Dec. 20, 1952.....	295 0	334 0	295 0	334 0
Balance forwarded to 1953 leave year.....	3 295	334	3 295	334
Accrual Dec. 21, 1952-Jan. 2, 1954.....	166	108	166	108
Available for use in 1953.....	461	442	461	442
Used, Dec. 21, 1952-Jan. 2, 1954.....	0	0	0	0
Forfeited per Public Law 102.....	101	0	166	0
Balance forwarded to 1954 leave year.....	360	442	295	442
Accrual, Jan. 3, 1954-Aug. 28, 1954 ⁴	102	68	102	68
Used, Jan. 3, 1954-Sept. 5, 1954 ⁵	462 136	510 0	397 136	510 0
Balance, c. o. b., Sept. 5, 1954.....	326	510	261	510

¹ Lump sum paid for 326 hours annual leave plus 1 holiday covering period Sept. 6 through close 6 hours on Nov. 2, 1954, in gross amount of \$1,787.22.

² Lump sum should have been paid for 261 hours annual leave plus 1 holiday covering period Sept. 6 through close 5 hours on Oct. 21, 1954, in gross amount of \$1,439.39.

³ Ceiling in accordance with Public Law 102 of July 2, 1953.

⁴ Separated in middle of period, no leave accrued for partial period.

⁵ 16 hours used July 1 and Feb. 2, 1954; 120 hours used Aug. 16-Sept. 5, 1954.

The General Accounting Office issued a formal notice of exception on March 5, 1956, against the lump-sum payment of 326 hours, stating the employee was subject to the 30-day leave accumulation limitation imposed upon Foreign Service employees under the Department of State and was entitled to lump-sum payment of 261 hours. Collection of the overpayment in the amount of \$347.83 was accomplished September 6, 1956.

It should be noted that the overpayment of \$347.83 represents 65 hours. Mr. Wolff earned 166 hours annual leave during the 1953

leave year (December 21, 1952 to January 2, 1954), and used no leave during this period. At the close of the 1953 leave year, Mr. Wolff forfeited, in accordance with Public Law 102, that portion of accrued leave (101 hours) which was in excess of his ceiling, which was interpreted as being 45 days (360 hours) instead of 295 hours. If this had been correctly handled, Mr. Wolff would have forfeited his full 1953 leave accrual or 166 hours.

Therefore, unless Mr. Wolff was prevented from taking leave while overseas, a question to be answered by the Administrative Office involved (ICA as successor agency to FOA), it is believed that this claim should be denied as the amount represents the remainder of the dollar value of leave which should have been forfeited at the close of the 1953 leave year, January 2, 1954.

(2) Subsistence payment in the amount of \$897.50:

Mr. Wolff was recalled from Tel Aviv, Israel, per travel order 4-917 dated March 31, 1954. Under date of June 7, 1954, Mr. Wolff submitted claim for travel expenses incurred on trip from Tel Aviv, Israel, to Washington, D. C. (May 4 to 26, 1954). This voucher was approved and paid as rendered on July 15, 1954. Upon Mr. Wolff's separation on September 5, 1954, no claim was received for subsistence covering the period May 27 to September 4, 1954. Mr. Wolff submitted a claim for the subsistence in May 1956, which was subsequent to the Department's claim for overpayment of terminal leave. This claim was reviewed by and rejected in view of nonapproval by the administrative office involved. Mr. Wolff then submitted the claim to the General Accounting Office which also disallowed the claim.

Based on thorough review of the file, it is felt that this claim should be disallowed. The following facts have been taken into consideration in arriving at this conclusion:

1. Mr. Wolff's home prior to his employment by the Department was within the Washington, D. C., metropolitan area.

2. During the period Mr. Wolff was overseas, no request was made for a change in official residence.

3. No questions were raised by Mr. Wolff upon receipt of travel order for his return to the United States, which order shows "Change of official station from Tel Aviv, Israel, to Washington, D. C." for shipment of household effects.

4. No claim was made by Mr. Wolff for subsistence covering the period May 27, to September 4, 1954, when he was separated.

5. No travel order was issued for the period May 27 to September 4, 1954.

6. The administrative office denied the claim and stated there had been no intention of keeping Mr. Wolff in a travel status.

7. The General Accounting Office after a thorough review concurred in our original determination.

In the event the subsistence claim should be allowed, a reduction in the amount would be necessary as Mr. Wolff was on annual leave for a portion of the period May 27 to September 4, 1954. (See transcript of leave record above.)

Amount claimed.....	\$847. 50
Annual leave 17 days at \$9.....	153. 00
Maximum allowable.....	694. 50

The reduction of \$153 is made in accordance with section 6.12 (d) of the standardized Government travel regulations.

In support of the above facts and information, there are attached the following documents:

Letter dated May 8, 1956, from Mr. Carlton Hayward, Director of Personnel, to Mr. Wolff.

Letter dated May 16, 1956, from Mr. Wolff to Mr. Carlton Hayward, Director of Personnel.

Memorandum dated June 5, 1956, from Miss Ellen Jenkins, Chief, Voucher Audit Section, to Mr. Rex A. Anderson, Executive Officer, Bureau of Foreign Commerce.

Memorandum dated June 15, 1956, from Mr. Rex A. Anderson, Executive Officer, Bureau of Foreign Commerce, to Miss Ellen Jenkins, Chief, Voucher Audit Section.

Letter dated June 21, 1956, to Mr. Wolff from Mr. Clifton G. Hall, Acting Chief, Accounting Operations Branch.

Letter dated August 15, 1956, from General Accounting Office to Department of Commerce.

Memorandum dated September 10, 1956, from Mr. Rex A. Anderson, Executive Officer, Bureau of Foreign Commerce, to Mr. Robert A. Strizzi, Chief, Accounting Operations Branch.

Letter dated September 28, 1956, from Miss Ellen Jenkins, Chief, Voucher Audit Section, to General Accounting Office.

Letter dated October 9, 1956, from General Accounting Office, to Department of Commerce.

Memorandum dated October 15, 1956, from Mr. Robert A. Strizzi, Chief, Accounting Operations Branch, to Mr. Rex A. Anderson, Executive Officer, Bureau of Foreign Commerce.

Memorandum dated October 24, 1956, from Mr. Carl N. Gibboney, former Director, Foreign Economic Development Staff, to Mr. Rex A. Anderson, Executive Officer, Bureau of Foreign Commerce.

Letter dated November 5, 1956, from Miss Ellen G. Jenkins, Chief, Voucher Audit Section, to General Accounting Office.

Letter dated November 29, 1956, from General Accounting Office to Mr. Herbert Wolff.

For the reasons stated above, this Department recommends against enactment of H. R. 5776.

The Bureau of the Budget has advised that it would interpose no objection to the submission of this report to your Committee.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

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